

DENIED and SO ORDERED
ENTER: 5/8/2020

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

**IN RE: ETHICON, INC. PELVIC
REPAIR SYSTEM PRODUCTS
LIABILITY LITIGATION**

THIS DOCUMENT RELATES TO:

Barbara Smith, et al. v. Ethicon, Inc., et al.

Case No. 2:12-cv-04791

**Master File No. 2:12-MD-02327
MDL No. 2327**

**JOSEPH R. GOODWIN
U.S. DISTRICT JUDGE**

**PLAINTIFFS BARBARA AND GARY SMITH'S MOTION TO BE
TRANSFERRED FOR TRIAL**

COME NOW Plaintiffs Barbara and Gary Smith and respectfully request that this case be transferred to the United States District Court for the District of Oregon for trial. As grounds for this Motion, Plaintiffs state as follows:

1. Plaintiffs Barbara and Gary Smith filed the instant lawsuit after Mrs. Smith suffered significant injuries from a pelvic mesh implant manufactured and marketed by Ethicon, Inc. and Johnson & Johnson (the “Ethicon defendants”).
2. Plaintiffs’ case was designate for work up as part of the Ethicon Wave 4 cases. *See Ethicon Pretrial Order # 243, Ex. A., No. 268.*
3. Plaintiffs disclosed experts on January 17, 2017, Dkt. No. 26, and the Ethicon defendants disclosed their experts on February 15, 2017. Dkt. No. 32.
4. Discovery in Ethicon Wave 4 cases closed on March 17, 2017. *See Ethicon Pretrial Order # 243 at 1.* Dispositive motions in this case were due by April 6, 2017, and the deadline for filing *Daubert* motions was April 13, 2017. *Id.* No dispositive motions or *Daubert* motions were filed before the respective deadlines passed. *See generally* Dkt. Nos. 32-33.
5. The parties agreed, after meeting and conferring per Court order, *Ethicon Pretrial Order # 243 at 5,* that the appropriate venue for trial of this case is the United States District Court for the District of Oregon. *See In re Ethicon, Inc., Master File No. 2:12-MD-02327, Dkt. No. 3390 at 6.*
6. On May 4, 2018, Plaintiffs requested this matter be reinstated to the active docket so that this matter could be transferred to United States District Court for Oregon for trial after the Smiths declined Ethicon’s settlement demand. Dkt. No. 38. In this Motion, Plaintiffs noted that Ethicon has not made any subsequent settlement offer to the

Smiths, nor has been willing to discuss another offer leaving transfer for trial the only remaining option. *Id.*

7. On July 25, 2018, the Court reinstated the Smiths' case to the active docket after the Smiths declined Ethicon's settlement offer. Dkt. No. 40

WHEREFORE, Plaintiffs Barbara and Gary Smith respectfully request this Court transfer this matter to the United States District Court for the District of Oregon.

Respectfully submitted,

By: /s Chris Cantrell

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

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